2762

SUPREME COURT OF THE UNITED STATES.

No. 265.

THE UNITED STATES, APP'TS,

vs.

RAFAEL GARCIA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	5	2
Deposition of Wm. A. Richardson	7	3
Deposition of Ygnacio Pacheco	8	3
Deposition of Wm. A. Richardson	10	4
Expediente	12	6
Map	15	7
Translation of expediente	17	7
Opinion of the board	20	8
Decree rejecting the claim	27	13
Notice of appeal	29	13
Notice of intention to prosecute appeal	29	14
Petition for review	31	14
Answer	34	16
Depositions of Manuel Castro and José de la Rosa	34	16
Deposition of Salvador Vallejo	39	19
Deposition of Ygnacio Pacheco	41	20
Opinion of Judge Hoffman	43	21
Opinion of the court confirming the claim	47	23
Decree of confirmation	50	25
Order granting appeal	52	26
Clerk's certificate	53	27

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twenty-third day of March, anno domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Rafael Garcia, for land in Mendocino county, was presented, and ordered to be filed and docketed with No. 113, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January 28th*, 1853.

In case No. 113, Rafael Garcia, for land in Mendocino county, the deposition of Ygnacio Pacheco, a witness in behalf of the claimant, taken before Commissioner Hilland Hall, was filed.

(Vide page 5 of this transcript.)

In the same case, the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 4 of this transcript.)

In the same case, the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked "H. H., No. 1," annexed thereto, was filed.

(Vide page 6 of this transcript.)

SAN FRANCISCO, *September 15th*, 1853.

Case No. 113 called. The counsel for the claimant read the evidence; argued, submitted, and taken under advisement.

SAN FRANCISCO, *Jan.* 17, 1854.

In the same case, Commissioner Thompson Campbell delivered the opinion of the board rejecting the claim.

(Vide page 13 of this transcript.)

Petition of Rafael Garcia.

To the United States land commission for the ascertaining and settling the private land claims in California.

The petition of Don Rafael Garcia respectfully showeth that heretofore, to wit, on the 15th day of November, 1844, Manuel Micheltorena, by his authority as constitutional governor of California, granted to your petitioner, at his special instance and request, and in remuneration of long and many services rendered by him to the Republic of Mexico, a tract of land to the extent of nine square leagues, to be located by your petitioner, at his own choice, in the northern part of the territory.

That your petitioner, on the fourth of March, A. D. 1846, reported to Pio Pico, then governor of California, that, availing himself of the grant heretofore mentioned, he had located the same in that part of the territory which is now known as the county of Mendocino, and requested said Pico to take such further action upon the subject as the same might deem meet and proper in the premises.

That the said Governor Pico, on the 7th of April, 1846, referred the matter to the judge of San Rafael, in order to obtain his report thereon.

That the said judge reported favorable thereon, whereupon said Pico had the proper entries made in the respective books of register. That all the documents above referred to, and a copy of the grant duly certified, together with a map of the premises, are on file in the archives of California, now in the hands of the surveyor general of the U. S. of America for the State of California, and that duly certified copies and translations of the same are herewith submitted and prayed to be made a part of this petition.

And your petitioner further saith, that said land is situated in the present county of Mendocino, measuring nine square leagues, and is bounded as follows:

1st. On the north by the southern boundary of Wm. Richardson, viz: the parallel of 38° 48′ north latitude.

2d. On the west by the Pacific Ocean.

3d. On the south by a line one league in length and parallel with the line first above mentioned, and nine leagues distant from the same.

4th. On the east by a line drawn from the most eastern point in the first above mentioned line to the most eastern point *to* in the southern boundary line described in No. 3.

And your petitioner further states that he has been in the quiet possession of said land since the year 1844, when said grant was made to him, and has always exercised full and undisputed ownership of the same, and is not aware of the existence of any title conflicting or superior to his own.

He therefore claims to be the legal owner of said land, and prays your honorable body will confirm and validate his title thereto.

CLARKE, TAYLOR & BECKH,
Att'ys.

Filed in office March 23d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Wm. A. Richardson.

SAN FRANCISCO, *Jan'y* 28, 1853.

On this day, before Com'r Hiland Hall came William A. Richardson, a witness in behalf of the claimant, Rafael Garcia, petition No. 113, and was duly sworn, his evidence being given in English. The U. S. associate law agent was present.

Questions by claimant.

Question 1st. What is your name, age, and place of residence?

Answer. My name is William Richardson, my age fifty-seven, and I reside on my rancho of Saucelito, Marin county.

Quest. 2. Look at the original document now shown you, marked H. H., No. 1, now attached to your deposition and filed in this case.

Ans. I have examined the document referred to, and know it to be genuine. I was in Monterey in the month of November, 1844, having been requested to go there by Governor Micheltorena, to submit to his inspection the papers of my rancho of Saucelito. I took with me the petition for the tract of land claimed in this case, having been requested by Garcia, who was a neighbor of mine, to present said petition to the governor, and to do what I could towards procuring the grant.

Governor Micheltorena gave me the document on or about the day of its date, directing me to hand it to Garcia. I did so hand the document over to Garcia within a few days thereafter. The signature to the document is the genuine signature of said Micheltorena.

W WM. A. RICHARDSON.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Jan'y 28, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 499.

Deposition of Ygnacio Pacheco.

SAN FRANCISCO, *Jan'y* 28, 1843.

On this day, before Com'r Hiland Hall came Ygnacio Pacheco, a witness in behalf of the claimant, Rafael Garcia, petition No.

113, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

Questions by claimant.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is Ygnacio Pacheco, my age forty-six, my residence in Marin county.

Quest. Look upon the paper now shown you, marked B, filed in this case, purporting to be a traced copy of an expediente certified by the surveyor general of California. State what you know of the original of said expediente or any part of it?

Ans. I was justice of the peace in San Rafael in March, 1846, and for some time previous. Rafael Garcia, the claimant, presented me the original document marked H. H., No. 1, and requested me to furnish a certified copy of said document, that he might transmit the same to Governor Pico. I accurately copied said document, and gave to said Garcia, on the first of March, 1846, the copy and certificate of which said paper marked B is a fac simile.

YGN'O PACHECO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Jan'y 28, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 498.

Deposition of Wm. A. Richardson.

SAN FRANCISCO, *Jan'y* 28, 1853.

On this day, before Com'r Hiland Hall, came William Richardson, a witness in behalf of the claimant, Rafael Garcia, petition No. 113, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

Question by claimants.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is William Richardson, my age fifty-seven, and I reside on my rancho of Saucelito, Marin county.

Question 2. Look at the original document now shown you, marked "Exhibit 1," now attached to your deposition and filed in this case.

Ans. I have examined the document referred to, and know it to be genuine. I was in Monterey in the month of November, 1844, having been requested to go there by Governor Micheltorena, to submit to his inspection the papers of my rancho of Saucelito. I

took with me the petition for the tract of land claimed in this case, having been requested by Garcia, who was a neighbor of mine, to present said petition to the governor, and to do what I could towards procuring the grant. Governor Micheltorena gave me the document on or about the day of its date, directing me to hand it to Garcia. I did so hand the document over to Garcia within a few days thereafter.

The signature to the document is the genuine signature of said Micheltorena.

Quest. State if you know anything, and what, in relation to the occupation of the land claimed in the case.

Ans. Shortly after obtaining the grant, Garcia, the claimant, took possession of the land described in the petition, and built a house there; since that time he has used the tract described for agricultural and grazing purposes. He has all that time had a considerable number of men, Indians, and others in his employment there, and he himself has resided alternately there and on his rancho in Marin county, where his family resides, passing from one place to the other several times during the year. He has continued to occupy it in this way up to the present time

WM. A. RICHARDSON.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Jan'y 28, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 499.

[SEAL.]

Por la solicitud de v. f'ha 4 del corriente en lo q. pide se le conceda un pasa porte pa. internasse hasta los puntos de la costa linea del norte del pais, con objeto de buscar un tereno de la estension de ocho à nueve leguas par ser muy reducido el que ahora ocupa con sus bienes.

Por este orden se podra v. presentarse a la comanderia militar de la linea de esta frontera pa. que en su vista pueda marchar v. q. buscar el terreno que solicita como en renumeracion de sus servicios prestados à la nation.

En caso q. v. eligise algun terreno desde luega puede ocupar lo con sus d'ho. bienes y posecion, interior se corren los tramites de estilo, presentando el diseño respectivo. Dios y libertad.

Monterey, 15 de Norbre. de 1844.

MANUEL MICHELTORENA.

Sr. Don RAFAEL GARCIA en su Rancho.

Filed in office January 28, 1853.

GEO. FISHER, *Sec'y.*

B.

Espediente.

Angs. 9, de 1846. Informe el Juez de Paz del pueblo de San Rafael. Pico.

SOR. GOBERNADOR: El ciudo. Rafael Garcia vecino de este jurisdicion ante V. E. se presenta y dice. que habiendore dado un orden al Sor Comte. Gral. Dn. Manuel Micheltorena de buscar un terreno (como consta por el adjunto documento) he tomado nueve leguas en las costas del norte del Presidio Ruso, como me presenta el diseño respectivo, colindante por el norte con el terreno de Dn. Guillermo Richardson y seguia la costa al sur h'ta. lo q. completa las nueve leguas.

A. V. E. suplico se sirva dar a esta mi peticion que tenga a bien en lo que recibiré gracia, jurandolo necesario lo que haga en papel comun por no haber del sello qe. corresponde.

RAFAEL GARCIA.

SAN RAFAEL, *Marzo* 4 *de* 1846.

E. S. Gobernador.

El ciudadano Rafael Garcia hace algun tiempo que se halla occupado con sus bienes el terreno que solicita que se fué concedido provicionalmente por su antecesor el Sr. Gl. Manuel Micheltorena, cuyo sitio por el plano que acompaña en este espediente parece que no pertenese algun particular por hallarse distante a esta frontera y colinda con el terreno de Dn. Guillermo Richardson escuanto puedo informar a V. E. sobre el particular.

YGIO. PACHECO.

SAN RAFAEL, *Abrl.* 29, *de* 1846.

Copy.

[SELLO.]

Por la solicitud de v. f'ha. 4 del corriente en lo que pide se le conseda un pasaporte para entarase los puntos de la costa linea del norte de este pais, con objeto de buscar un terreno de la estencion de ocho ó nueve leguas por ser muy reducido el que ahora ocupa con sus bienes.

Por d'ho orden se podra v. presentarse à la comanderia militar de la linea de esta frontera pa. que en su vista puedo marchar v. q. buscar el terreno que solicita como en remuneracion de sus servicios prestados à la nacion.

En caso q. v. elyase algun terreno desde luega puede ocuparlo con sus d'hos bienes y tomar pocecion interun se corren los tramites de estilo presentando el déceño respectivo. Dios y libertad.

Monterrey, 15 de Nov. de 1844.

MANUEL MICHELTORENA.

Sr. Don RAFAEL GARCIA en su Rancho.

No. 875.—1860.

2

#112

SAN RAFAEL, *Mayo* 1, *de* 1846.

Certifico como Juez de este lugar que la presente copia es sa cada fedmte. de su original con dos testigos de assa.

YGNACIO PACHECO.

Assa.
GREGORIO BRIONES,
FERNANDO FELIS.

(Here follows map, paged 15.)

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor gl. of the United States for the State of California, and as such now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican territory, or Department of Upper California, do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five inclusive, and each of which is verified by my initials "S. D. K." exhibit true and accurate copies of certain documents now on file and forming part of the said archives in my office.

In testimony whereof, I have hereunto signed my name and affixed my private seal, (not having a seal of office,) at the city of San Franco., Cal., this 13th day of December, 1851.

SAMUEL D. KING,
Surveyor Gl., Cal.

Filed in office March 23, 1852.

GEO. FISHER, *Sec'y.*

Translation of Expediente.

ANGELES, *April 7th*, 1846.

Let the justice of the Pueblo de San Rafael report on the matter.

(Signed) PICO.

SIR GOVERNOR:

The citizen Rafael Garcia, a resident of this jurisdiction, appears before ye and represents: That the commandant general, Don Manuel Micheltorena, having given to me an order to locate a tract of land as stated by the annexed document, I have taken nine leagues on the northern coasts of the Russian Presidio, as the respective sketch represent, bordering towards the north on the tract of land of Don Guillermo Richardson, and following the coast towards the south until completing nine leagues. I entreat ye to take such action upon this petition as may be most proper, whereby I shall receive mercy.

I take the necessary oath, and write this on common paper, there not being here any of the corresponding stamp.

(Signed) RAFAEL GARCIA.

San Rafael, March 4th, 1846.

EXCELLENT SIR GOVERNOR:

It is sometime since the citizen Rafael Garcia is occupying with his property the tract of land he asks for which *which* was granted to him personally by your predecessor, the Hon. General Don Manuel Micheltorena, which location, according to the accompanying plan in this record of proceedings, appears not to belong to any private individual on account of its distance from this frontier, and it borders on the tract of land of Don Guillermo Richardson.

This is all I can inform ye on the subject.

(Signed) YGNACIO PACHECO.

San Rafael, April 29th, 1846.

[SEAL.] Copy.

According to your memorial of the 4th instant, you ask for the grant of a passport to penetrate into the points of the coast on the northern line of this country, with the object of locating a tract of land of the extent of eight to nine leagues, since that which you now occupy with your personal property is so limited.

By this order you are empowered to appear before the military commanding authority of that frontier line, in order that after examination of it you may proceed to your research after the tract of land you ask for, as a recompense for the services rendered by you to the nation. If you should happen to select any tract of land, you are empowered to occupy it with your said property, and to take possession of it while the usual legal proceedings is being prosecuted, presenting the requisite sketch.

God and liberty.

(Signed) MANUEL MICHELTORENA.

Monterey, November the 15th, 1844.

To Don Rafael Garcia, at his ranch.

SAN RAFAEL, *March 1st*, 1846.

I certify, together with two assistant witnesses, in my capacity of justice of this place, that the present copy has been faithfully drawn from its original.

(Signed) YGNACIO PACHECO.

Assistant witness, (sig'd) GREGORIO BRIONES.

Assistant witness (sig'd) FERNANDO FELIS.

Filed in office March 23d, 1852.

GEO. FISHER, *Sec'y.*

Opinion of the Board.

RAFAEL GARCIA. vs. THE UNITED STATES. } Rancho of nine leagues in Mendocino county.

The petitioner in this case claims nine square leagues of land,

and for confirmation of the same, relies upon the following documents: First, a letter which he received from Governor Micheltorena, and which is as follows:

"By your memorial of the 4th instant you ask for the grant of a passport to penetrate into the points of the coast in the northern line of this country, with the object of locating a tract of land of the extent of eight to ten leagues, since that which you now occupy with your personal property is so limited.

"By this order you are empowered to appear before the military commanding authority of that frontier line, in order that after examination of it you may proceed to your research after the tract of land you ask for, as a recompense for the services rendered by you to the nation. If you should happen to select any tract of land, you are empowered to occupy it with your said property, and to take possession of it while the usual legal procedure is being prosecuted, presenting the respective sketch."

This note bears date the 15th November, 1844, and is signed by Manuel Micheltorena, and addressed to Rafael Garcia.

The claimant has also filed a traced copy of the original espediente, taken from the United States surveyor general's office for this State. This espediente, in addition to the above letter, contains a petition of the claimant addressed to Governor Pio Pico, and which is as follows:

SIR GOVERNOR: The citizen Rafael Garcia, resident of this jurisdiction, appears before y. e., and represents that the Commandant General Don Manuel Micheltorena, having given to me an order locate a tract of land stated by the annexed document, I have taken nine leagues on the northern coasts of the Russian presidio, as the respective sketch represents, bordering towards the north on the tract of land of Don Guillermo Richardson, and following the coast towards the south until completing nine leagues.

I entreat y. e. to take such action upon this petition as may be most proper wherefore I shall receive mercy.

I take the necessary oath, and write this on common paper, there not being here any of the corresponding stamp.

San Rafael, March 4th, 1846.

(Sig'd) RAFAEL GARCIA.

The governor, on the receipt of this petition, made the following marginal order:

"ANGELES, *April 7th*, 1846.

Let the justice of the Pueblo de San Rafael report on the matter

(Sig'd) PICO."

In compliance with this order, the justice made the following report:

"EXCELLENT SIR GOVERNOR: It is sometime since the citizen Rafael Garcia is occupying with his property the tract of land he asks for, which was granted to him previously by your predecessor, the Hon. General Don Manuel Micheltorena, which location, according to the accompanying plan in this record of proceeding, appears not to belong to any private individual on account of its distance from this frontier, and it borders on the tract of land of Don Guillermo Richardson.

This is all I can inform your excellency on the subject.

San Rafael, April 29, 1846.

(Sig'd) IGNACIO PACHECO."

The foregoing documents embrace all the documentary evidence adduced by the claimant in support of the allegations contained in his petition.

In regard to the occupation and inhabitancy of the land, the claimant has proved, by the deposition of William A. Richardson, that he took possession of the land described in the petition, and built a house on it shortly after obtaining his grant, since which time he has continued to use it for agricultural and grazing purposes, and that he has had since that time a considerable number of men, Indians and others, in his employment, and that he has resided alternately there and on his rancho in Marin county, where his family resided, passing from one place to the other several times during the year.

There is no proof that any approval was ever made by the Departmental Assembly, or that any concession was ever made or submitted to that body, and there is no proof that any judicial possession was ever given or judicial measurement made.

The first question which presents itself for investigation and decision is the legality and sufficiency of the basis upon which the equities in this case rest, and from which the claimant's right to a confirmation of his claim must proceed.

The only original document produced is the letter of the Governor Micheltorena addressed to the petitioner, and indeed this is the only document upon which the pretensions of the claimant can have any foundation.

In regard to the application made two years afterwards to Governor Pio Pico, no pretense of title can be inferred from the proceedings on that application, as it does not appear that Pico proceeded further than to make his order for information; the whole record closes with the reply of the justice made in obedience to the order of the Governor.

It is necessary, in order to understand the full import of this letter, to give a concise view of the condition and geographical position of the region of country, or rather of the northern frontier of Upper California, where the tract of land in question is said to be situated.

At the time the proceedings in this case had their beginning, the colonization of the northern frontier of Upper California was confided to General Mariano G. Vallejo. The object which the Mexican government had in view in sending General Vallejo to the north, and clothing him with the extraordinary powers, particularly in regard to the question of colonization which he possessed, is expressed in a communication addressed to General Vallejo by Governor Figueroa, bearing date the 24th of June, 1835. In the communication it is stated that the principal object which the government had in view in making establishments in the north was to prevent the progress of the Russian establishments of Bodega and Ross, and for this purpose Gen'l Vallejo is informed that he is empowered to invite families throughout the republic to colonize the frontier, and that he has the power to grant lands to those who may settle them, such grants being subject to the approval of the territorial government; and he is further informed that he is the only person empowered to convey the lands under his charge. In the same communication he is enjoined not to grant titles except to those who may be accredited as worthy of them. It is clear, from the whole tenor and import of this communication, that General Vallejo was intrusted with the defense of the northern frontier, the principal object of which was to protect it against the encroachments of the Russians. At the time the petitioner in this case made his application to Governor Micheltorena for a passport which would enable him to penetrate into the frontier, for the purpose of making a selection of a tract of land, the country was still to some extent under the control of General Vallejo; although it would seem that the power to make grants of land situated in that region was no longer confided to him; notwithstanding it was deemed advisable to consult him, and for this purpose the passport in question was evidently solicited and granted.

By the terms of the passport, Garcia, the petitioner, was authorized to appear before the military commanding authority of that frontier line, and was further authorized to make a full examination of the whole country, in order that he might make a selection of the tract of land which he desired to locate, and this privilege was granted on account of the services which he had rendered the nation. The document referred to also authorized the petitioner, if he "*should happen to select a tract of land*," to take possession of it with his property while the legal procedure of obtaining a title was being prosecuted. The usual "legal procedure" here referred to clearly related to the mode of obtaining a grant under the colonization laws then in force, and this view is sustained by the subsequent application by the party made to Governor Pico two years after the permission to select a tract of land had been granted by Governor Figueroa. The document in question, and which, it is insisted, should be considered as a grant of the land, is nothing more than what it purports to be, a mere passport, and

the privilege of selecting a tract of land in a particular region of country for which the party might obtain a title in the usual way. The party, after he had made his selection, was authorized, in consideration of personal services rendered to the nation, to take possession of the land solicited; but there is nothing in all this from which a grant of the land can be inferred, or from which an allegation to make a grant could justly proceed. Under the colonization laws then in force, it was made the duty of every person soliciting lands to address a petition to the governor, in which it was required to give a particular description of the land asked for, together with other matters necessary for the governor to understand before he made the concession. The petition upon which Governor Micheltorena issued his passport is not produced, but its substance is recited in the first lines of the governor's reply: he says, "By your memorial of the 4th inst. you ask for the grant of a passport." The memorial of the party, as appears from the above recital, did not ask for a grant of land, but merely for a "grant of a passport." At the time of the issuing of this passport by the governor, the party himself did not know what particular tract of land he might select, and of course no description could be furnished the governor. There was nothing before the governor upon which he could act. The petition required by law was a part of the legal procedure to which the governor referred in his letter, and when that petition should be presented, the governor would then decide whether the land asked for should be granted. There appears to have been no misunderstanding either on the part of the petitioner or the government as to their respective duties and obligations. When the petitioner received his passport, he proceeded to make the necessary examination and selection of a tract of land which, in his petition of the 4th of March, 1846, addressed to Governor Pico, he describes, and solicits a grant for the same. The governor does not consider that there is anything in his case which makes it an exception, but proceeds as in other cases, and makes an order for information, directed to the proper officer. This officer makes his report, at which point the proceedings end. For aught that appears to this commission, the governor had good cause for refusing the grant; at all events, no evidence that a concession or any other document was ever issued by the governor to the party has been produced. The party, in our judgment, has failed to show that his claim is derived either from the Mexican or Spanish Government, or that it has that legal beginning from which it is essential that all equities which entitle a party to a decree of confirmation should emanate. We are, therefore, of opinion that the application for a confirmation of this claim must be denied.

Filed in office Jan'y 17, 1854.

GEO. FISHER, *Sec'y.*

Decree.

RAFAEL GARCIA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Jan'y 17, 1854.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing eighteen pages, numbered from 1 to 18, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 113 on the docket of the said board, wherein Rafael Garcia is the claimant against the United States for lands in Mendocino county.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twelfth day of September, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[G. F.]

(Sig'd) GEO. FISHER, *Sec'y.*

Notice of Appeal.

Case No. 113. On appeal from the Board of U. S. Land Commissioners.

RAFAEL GARCIA, appellant,
vs.
THE UNITED STATES, appellee.
} Claim for 9 sq. leagues in Mendocino county.

SIR: Please take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,
CAMPBELL, TAYLOR & BECKH,
Att'ys for Claimant.

San Fr'co, Dec. 8th, 1854.

To the clerk of the U. S. district court
for the northern district of California.

Endorsed: Filed Dec. 11th, 1854. John A. Monroe, clerk.

Notice of Intention to Prosecute Appeal.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California.

RAFAEL GARCIA, appellant,
vs.
THE UNITED STATES, appellee.

Appeal No. 96 from the decision of the United States board of land commissioners for the State of California, rejecting claim No. 113, for lands in Mendocino county, in the northern district of said State.

Notice of Appellant.

To the United States, appellees in the above case.

In pursuance of the 12th section of the act of Congress approved Aug. 31, 1852, entitled "an act making appropriations for the civil and diplomatic expenses of the government, for the year ending June 30, 1853, and for other purposes," you are hereby notified of the intention of the claimant and appellant in the above case to prosecute the appeal therein, from the decision of the board of United States land commissioners for the State of California, rendered Jan'y 17, 1854, rejecting this claim for certain lands in Mendocino county, in the northern district of California, and docketed as No. 113 in the proceedings of said commission.

RAFAEL GARCIA,
By his Counsel,
HORACE HAWES &
JOHN A. WILLS.

Dec. 18th, 1854.

Endorsed: Filed Dec. 18, 1854. John A. Monroe, clerk.

Petition for Review in Case No. 113.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of California.

RAFAEL GARCIA, appellant,
vs.
THE UNITED STATES, appellee.

Appeal No. 96 from the board of the United States land commission, in claim No. 113.

Petition of Claimant for a Review, &c.

To the Hon. Ogden Hoffman, jr., judge of the district court of the U. States for the northern district of California.

The petition of Rafael Garcia, the appellant in the above case respectfully represents:

That heretofore, to wit, on the 23d day of March, A. D. 1852, he filed his claim before the United States land commission for ascertaining and settling private land claims in the State of California, for nine square leagues of land, situated in Mendocino county, in the northern district of California, in pursuance of the provisions of the act of Congress of March 3, 1851, relating thereto, the said claim being docketed as claim No. 113, on the proceedings of the said commission.

That the transcript of the proceedings and decision, &c., of the land commission in said claim No. 113, filed in this court in pursuance of the provisions of the 12th section of the act of Congress, approved Aug. 31, 1852, entitled "an act making provision for the civil and diplomatic expenses of the government, &c., and for other purposes," contains a full statement of the nature of the claim, the extent, boundaries, and locality of the lands claimed, the name of the original and present claimant, and a deraignment of the claimant's title to the lands so claimed, (all of which are fully stated in the petition of the claimant presented to the said commission,) together with a transcript of the report *of the report* of the said board of commissioners, and of the documentary evidence and testimony of the witnesses on which it is founded, to which, for the sake of greater convenience and to avoid unnecessary repetition, your petitioner begs leave to refer, and asks may be made and accepted as part of this his petition for a review of the decision of the said commissioners, so far as required by the 9th section of the act of Congress of March 3, 1851, establishing the said board of commissioners, and by the subsequent legislation of Congress, in such case made and provided.

That the claim of your petitioner in said claim No. 113 was, by the decision of the said board of commissioners, on the 17th day of January, 1854, rejected, for the reasons set forth in the opinion of the said board, contained in the said transcript before referred to.

That on the 13th day of September, 1854, the said transcript of the proceedings, decision, &c., of the said board of commissioners, rejecting the said claim, was filed in this honorable court, in pursuance of the provisions of the 12th section of the said act of Congress, approved Aug. 31, 1852; that an appeal by operation of law was thereby entered in behalf of your petitioner from the said decision rejecting his claim, and that on the 18th day of December, 1854, your petitioner, in further pursuance of the provisions of the said section of the said act, filed with the clerk of this honorable court a notice to the United States of his intention to prosecute the said appeal.

Wherefore your petitioner, appellant as aforesaid, respectfully prays this honorable court, in pursuance of the several acts of Congress in such case made and provided, to review the said decision of the said commissioners, and to decide on the validity of the said claim; and further, to make an order in this case allowing either

party, on reasonable notice to the other, to take such further evidence for or against said claim before this court or the commissioners as either party may be able to present, and your petitioner will ever pray, &c.

RAFAEL GARCIA,
By his Counsel,
HORACE HAWES &
JOHN A. WILLS.

Dec. 18, 1854.

Endorsed: Dec. 18, 1854. Service of a copy of the within petition is hereby acknowledged. S. W. Inge, U. S. att'y.

Filed Dec. 18, 1854.

JOHN A. MONROE, *Clerk.*

Answer.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of California.

THE UNITED STATES, appellees,
vs.
RAFAEL GARCIA, appellant. } No. 96.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants, and pray that the decision of the board of commissioners be affirmed, and that the said title be decreed to be invalid.

A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed October 15, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Depositions of Manuel Castro and José de la Rosa.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
RAFAEL GARCIA.

SAN FRANCISCO, *May 19th*, 1857.

On this day, before J. Edgar Grymes, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Manuel Castro, a witness produced on behalf of the claimants in case No. 96, being an appeal

from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 113 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by a sworn interpreter:

Present: U. S. Dist. att'y and E. L. Gould, for claimant.

Questions by att'y for claimant.

Ques. What is your name, age, and place of residence?

Ans. My name is Manuel Castro; 35 years; and I reside in San Francisco. I was born in California, and I have lived mostly in California, except a few years in Mexico. I know Rafael Garcia; have heard of his rancho, "Del Norte," but I have never seen it. (Witness is here shown the document signed Manuel Micheltorena, dated Monterey, 15th of November, 1844, at page No. 9 of the transcript, and states:) That this is a copy of the original which I examined this morning in the archives at the U. S. surveyor general's office in this city. I know the signature of Manuel Micheltorena, former governor of California. Micheltorena was governor in November, 1844. I recognized his signature this morning to the original document copied at page 9 of the transcript; I believe it to be his true and genuine signature; I have seen him write despatches; I was secretary of the prefecture of the district of Monterey for some time under Micheltorena's administration. (The witness is shown the document signed Rafael Garcia on page No. 8 of the transcript, and states that) it is a copy of the original I have just seen in the archives of the U. S. surveyor general's office.

I have seen Pio Pico write, and I believe that his signature to the order in the margin to be genuine; he was governor at that date.

Cross-examination waived.

(Sig'd) MANUEL CASTRO.

Sworn to and subscribed before me, May 19th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
RAFAEL GARCIA.

SAN FRANCISCO, *May* 19, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of Cali-

fornia, duly authorized to administer oaths, &c., &c., came José de la Rosa, a witness produced on behalf of the claimants in case No. 96, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 113 on the docket of the said board of commissioners, and was duly sworn and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter:

Present: U. S. dist. att'y and E. L. Gould, for claimant.

Questions by attorney for claimant.

Ques. What is your name, age, and place of residence?

Ans. My name is José de la Rosa, 65 years old, and I reside in Sonoma, and have resided there since 1838. I know Rafael Garcia. I have known him for 21 years, since 1836. I know the rancho "Del Norte." I knew it in 1838. I do not remember when Garcia first went there. I was on the rancho in 1845. I went there to drive the disobedient Indians from the rancho, as I was alcalde in 1845. They were some of the Indians that Garcia had taken from Sonoma on his ranch by my authority. I lived in Garcia's house for three days and three nights. It was a good dwelling-house for those times. Garcia had some members of his family there; he had laborers in his employment cultivating the soil, and his cattle was grazing about there. Garcia has kept the possession of it since 1845 up to this time.

Cross-examination.

Ques. How much of the land did Garcia cultivate when you was there?

Ans. I cannot tell you the quantity of land under cultivation; I do not know anything about it. About the house I can inform you; he had his sons there and his laborers; I did not see his wife. The Indians I have spoken of were laborers employed by Garcia by my permission. Those that I took away were some who were forced to work for Garcia against their will. I cannot tell the number of Indians that Garcia had; he might have had a hundred; there were a thousand of Indians on the frontier. I saw the Indians working on that ranch; some were cutting wood, some had other occupation. I did not pay much attention to what they were doing; I was in the house minding my own business. I know that the Indians were cutting wood to make fences, so that they might sow. I did not see any fences; I was minding my own business. I saw Garcia there. I do not know the number of cattle and horses he had there. I saw his brand on the animals, so that I knew they were his. I do not recollect his brand. Garcia had another residence at Bolinas. I have asked him if [he] had a grant there; he had a ranch there. I do not know how much land he had at Bolinas. I know Garcia had a ranch there, but I

do not know its extent. The two ranches were in different parts of the country.

JOSE DE LA ROSA.

Sworn to and subscribed before me May 19, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed May 19, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of Salvador Vallejo.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
RAFAEL GARCIA.

SAN FRANCISCO, *May* 18, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Salvador Vallejo, a witness produced on behalf of the claimants, in case No. 96, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 113 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—~~his~~ evidence being interpreted by J. Edgar Grymes, a sworn interpreter:

Present: Wm. Blanding, esq., dist. attorney, and E. L. Gould, for claimant.

Questions by att'y for claimant.

Ques. What is your name, age, and place of residence?

Ans. My name is Salvador Vallejo, 42 years old, and reside in Napa city, Napa county. I am a ranchero. From the year 1837 to 1846, I was captain in the Mexican army, and had the command of the northern frontier in this State.

I know Rafael Garcia. I have known him since 1828. He was commandante of a picket of men in Sonoma in 1828 or 1830. In 1836 he became a lieutenant, and remained so until the Americans took the country. From 1830 to 1836 I knew him to be in active service. I believe that his pay, the sergeant's pay, was $500 a year, and a lieutenant $1,000 a year. The government never paid him any money for services, to my knowledge. The government had no money to pay with.

I know Garcia's rancho "Del Norte." I believe he took possession of it in 1845. He had been on the land before. I also had been there with him.

He occupied it by putting cattle on it. Afterwards his son came there with a Mr. Louis Altimiran and a large quantity of Indians, and they stayed there in the service, and occupied it for Garcia. The last time I saw Altimiran in Napa, about two or three years ago, he told me that he had just left Garcia's ranch.

I know that it is occupied now, but I do not know personally who occupies it. I believe that Garcia occupies it now, but I do not know who is on the ground there. He built a house of wood there in 1845. It was a fine house, a dwelling-house. Garcia lived in it. Garcia lived there and at his house at Bolinas alternately. He sent cows and calves and horses there, about 3 or 400 head.

Cross-examined.

It was by Garcia's orders that the house was erected. I know that he had the house built by seeing him order his men on the ranch. At that time I lived about 12 leagues from the rancho "Del Norte," on my ranch on Clear lake. I was often on the "Del Norte" rancho.

The Indians were hostile there—I mean some of the Indians. In that part of the country there were four settlements—Garcia's, Richardson's, Cayetano Juarez, and my own. Juarez and myself got our titles from Micheltorena. I never saw the papers of the other two.

SALVADOR VALLEJO.

Sworn to and subscribed before me May 18, 1857.
J. EDGAR GRYMES,
Special Comm'r.

Deposition of Ygnacio Pacheco.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *May* 18, 1857.

THE UNITED STATES
vs.
RAFAEL GARCIA.

On this day, before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ignacio Pacheco, a witness produced on behalf of the claimants, in case No. 96, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 113 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter:

Present: Wm. Blanding, esq., dist. att'y, and E. L. Gould, for claimant.

Questions by attorney for claimant.

Ques. What is your name, age, and place of residence?

Ans. My name is Ignacio Pacheco, 51 years old, and I reside at San Rafael, Marin county. I was alcalde in San Rafael in 1845 and 1846. I know Rafael Garcia since 1826, and I know his rancho "Del Norte." I have never been on the rancho, but I saw when the cattle (400 head) was sent there. (Witness is now shown a copy of a letter signed Ignacio Pacheco, at page No. 9 of the transcript, and states) that at its date he was alcalde or justice of the peace of San Rafael, and that the original of said letter was signed by himself, and that he has examined the original this morning in the office of the surveyor general of the United States.

It was signed at the time it bears date.

No cross-examination.

YGNO. PACHECO.

Sworn to and subscribed May 18, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed May 19, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Opinion of Hon. O. Hoffman, rejecting the Claim.

THE UNITED STATES
vs.
RAFAEL GARCIA.

In support of his claim, the appellant exhibits an order of Micheltorena, dated Nov. 15th, 1844, which is as follows:

"According to your memorial of the fourteenth instant, you ask for the grant of a passport, to penetrate into the points of the coast on the northern line of this country, with the object of locating a tract of land of the extent of eight to nine leagues, since that which you now occupy with your personal property is so limited. By this order you are empowered to appear before the military commanding authority of that frontier, in order that after an examination, you may proceed to your research after the tract of land you ask for, as a recompense for the services rendered by you to the nation.

If you should happen to select any tract of land, you are empowered to occupy it with your said property, and to take possession of it while the usual procedure is being prosecuted, presenting the requisite sketch.

God and liberty.

MANUEL MICHELTORENA.

Monterey, November 15th, 1844.

To Don Rafael Garcia, at his rancho."

Availing himself of the permission thus granted, the claimant appears to have selected a tract of land, and to have occupied and improved it to some extent. No steps, however, were taken by him to obtain a title until March 4th, 1846, when Garcia addressed a petition to Gov. Pico, in which, after referring to the order of Micheltorena, he solicits a grant of the land. Gov. Pio Pico, by a marginal order, dated April 7, 1845, referred the petition to the alcalde of San Rafael, for the usual informe. On the 29th of April, 1846, the alcalde reported that the land did not belong to any private individual. The foregoing constitutes all the evidence of title produced by the claimant. It is not pretended that any grant was ever issued for the land, or that any further action whatever was taken by Pio Pico, on receiving the alcalde's informe. Whether he determined not to grant the land, or whether he omitted to do so in consequence of the distracted condition of public affairs, we are ignorant; one fact is clear, no grant was obtained by the claimant.

It is contended, that the permission given by Micheltorena to search for a suitable tract, and to occupy it, if found "while the usual procedure is being prosecuted," gave to the claimant *and* equity which, when coupled with subsequent occupation, this court is bound to respect. But the permission in this case is widely different from the concessions or warrants of survey, which in the Louisiana and Florida cases were held to constitute inchoate or equitable titles.

A brief reference to the mode of granting public lands in Louisiana and Florida, as compared with that established by the colonization laws, will show that the decisions applicable to inchoate titles under the former system can have no application to the present case.

In Louisiana and Florida, the granting officer, on receipt of the petition, issued a concession to the party, authorizing him to have his land surveyed by the official surveyor. If the surveyor found the land to be vacant, and that it would not interfere with the rights of others, he returned a plat or figurative plan, and the party thereupon obtained an absolute grant.

The preliminary concession was, as its name imports, a grant, and usually conceded, as in Glen's case, 13 How., 258, the land to the petitioner and his heirs. To these concessions conditions were commonly annexed: that a mill should be erected in a specified time, that the land should be cultivated, that the party should levee and ditch the river front in Lower Louisiana, &c. Where, then, a party had obtained a concession, but had omitted to procure the subsequent absolute title on the completion of the survey, the title acquired by the concession was held to be inchoate and imperfect, and the real equity of the claimant was deemed to consist in the performance of the conditions or contract specified in the concession. The implied promise or assurance contained in the conces-

sion, that the title should issue provided the party performed the conditions, was deemed obligatory on the conscience of this, as well as the former government, and the claims in such cases were confirmed.

Under the Mexican system, no preliminary concession or warrant of survey issued to the party. The final and absolute title was by the regulations of 1828, the first and only document which the petitioner received, and conditions subsequent were introduced into the final grant, by which on their non-performance the estate of the grantee could be divested. A mere petition to search for land, such as that given to the present claimant, finds no place in the Mexican system; nor can a naked authority to take possession be likened to these preliminary concessions, under and on the faith of which this land was surveyed and the conditions fulfilled in Louisiana and Florida.

The application of Garcia to Micheltorena was for a passport to enable him to search for land. In granting this, and also the permission to put his cattle upon the tract he might select, Micheltorena in no respect bound himself or his successors to issue a final title. Such seems to have been the view of Pio Pico and the claimant himself, for a petition, accompanied by the usual deseño, is formally presented to that officer, and by him referred for information, as in other cases.

Had the order of Micheltorena contained any words which might be construed to import a present grant, the case might be different. But none such are found. If this claim is to be confirmed, every provisional license or permission temporarily to occupy land must be held to constitute an equitable title—provided the claimant has availed himself of the permission—a ruling which would astonish no one more than the old inhabitants of the country, by whom the importance of obtaining a "title" from the governor was well understood.

For aught we know, Pio Pico, when the petition was subsequently presented, found it inexpedient to grant the land; and if the claimant, under a mere permission to occupy it with his cattle, has built a house upon it, and for two years omitted any effort to procure a title, he must attribute the loss of the land to his own neglect.

Such was the view taken of this claim by the board, by whom it was unanimously rejected, and in that decision we concur.

Opinion of Hon. M. H. McAllister confirming the claim.

UNITED STATES
vs.
R. GARCIA.

The documentary title ascertains—

1. That the lands at the time claimant solicited a grant was situated in a remote part of the country into which the claimant was to penetrate to discover and locate a tract of land.

2. That a passport was given him to penetrate into the country, and he was empowered to appear before the military authorities of that frontier, in order that he might proceed to search after the tract of land he asked for, consisting of the extent of eight or nine leagues, in recompense for the services rendered by him to the nation.

3. That if he should select a tract of land, he was empowered to occupy it with his property and to take possession of it while the usual procedure is being prosecuted, presenting the required sketch.

The documentary title which exhibits these facts is dated 15th November, 1844, and was executed by Governor Micheltorena. Subsequently, on 4th March, 1844, the claimant presented his petition to the then Governor Pico, referring to the order of Micheltorena, and stating that in accordance with it, he had located nine leagues, giving a description of the land, referring to a diseño which accompanied the petition. A reference of this petition was made by the governor to the justice of the pueblo de San Rafael, who reported that it was some time since the claimant had been occupying with his property the tract of land he asked for, which had been granted to him previously by Gen. Micheltorena, and the report concludes that the land is subject to grant.

This is all the documentary title in the case, and certainly does not, in the opinion of the court, constitute an express grant. But there are facts in this case which raise the question whether, connected as they are with the imperfect documentary title, do not create an equity which this court should respect. Unless fraud can be imputed to claimant for not proceeding to perfect his title by obtaining a grant, which, in view of the habits and usages which prevailed among a careless and ignorant people, ought not to be considered as *per se* fixing it upon the claimant. There seems to have been good faith, and there is every reason to believe that had claimant proceeded to perfect his title, the governor having received a favorable report would have issued the grant; and if we look to the other facts in the case, we are induced to believe, that if the Mexican rule had continued in this country, the title of claimant would have been, or at least ought to have been, respected.

One of the Mexican authorities acknowledged that claimant had been a long time occupying the land under what he deemed a provisional grant.

Gov. Micheltorena places in the document he executed his action on the ground that the land was to be a recompense for services rendered by the claimant to the nation—a consideration highly meritorious, and one not strictly pecuniary, not to be disregarded by a court of equity. The testimony shows that this consideration was not nominal, and inserted, as there is reason to believe in many cases, as matter of complimentary form. It is in proof that the claimant was an officer in the Mexican service in 1836, and continued so until the Americans took the country. Salvador Val-

lejo, a witness, swears that he knew the claimant to have been in active service from 1830 to 1836; that the government paid no money for the services, and he estimates, taking the usual rate of a sergeant's and lieutenant's pay, the services of claimant to amount in the aggregate to no inconsiderable sum. The claimant, independently of previous services from 1830, was lieutenant from 1836 to date of the document executed by Micheltorrena.

In estimating the equity of this claim, we cannot but consider that the services rendered by claimant were long continued, and constituted a highly meritorious consideration.

The evidence also establishes the fact, that soon after the delivery to claimant of the passport executed by Governor Micheltorena, the claimant did penetrate into the then distant frontier, locate his land, build upon it, cultivated, and has continued to do so from that period to the present. This occupation was notorious, was known to the government, as evidenced by the report of the local Mexican functionary to Gov. Pico, who refers to the long occupancy of the claimant what he termed a "provisional grant." In view of the consideration on which the government acted, of the long and undisturbed possession of claimant, of the fulfilment by him of the agricultural policy of Mexico, we think the whole transaction is characterized by that good faith which should exempt the claimant from the consequences of his laches in not having his title perfected—a laches to be indulgently received under the circumstances of the case.

In the decision of this case, the court have entertained considerable doubt, and one of the judges has assented to the decree, in order [to] afford an opportunity for an appeal, so that the case may be brought before the appellate tribunal; a decree confirming the claim will therefore be entered.

Endorsed: Filed Dec. 5, 1857. John A. Monroe, clerk, by J. Edgar Grymes, deputy.

Decree.

At a stated term of the district court of the United States for the northern district of California, continued and held in and for the said district at the court room of the said court, in the city of San Francisco, on Saturday, the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-seven—

Present, the honorable M. H. McAllister, circuit judge; the honorable Ogden Hoffman, district judge.

RAFAEL GARCIA, appellants,
vs.
THE UNITED STATES, appellees. } Decree No. 96.

No. 96. On appeal from the final decision of the board of com-

missioners to ascertain and settle private land claims in the State of California.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved on the 3d day of March, A. D. 1851, upon the transcript of the proceedings and decision of the said commission, and of the papers and evidence upon which the said decision was founded, and upon the further evidence taken by order of said court; and it appearing to the satisfaction of the court that the said transcript has been duly filed, and counsel for the respective parties having been heard, it is the opinion of the court that the said decision is erroneous; and it is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby in all things reversed, set aside, and annulled; and it is by the court hereby further ordered, adjudged, and decreed, that the claim of the appellant is a good and valid claim, and that the said claim be and the same is hereby confirmed unto the said appellant, Rafael Garcia, to the extent of nine square leagues.

The land of which confirmation is hereby made is the same which was described in the petition presented by the said appellant to Governor Pio Pico, bearing date March the 4th, A. D. 1846, a copy of which is on file in this court in this cause, and is situated on the coast north of the Russian presidio, bordering on the tract of land of Don Guillermo Richardson, (known as the "Albion ranch,") following the coast to the south until completing nine square leagues, and is more particularly delineated by the diseño annexed to the said petition to Pio Pico.

(Sig'd) M. HALL McALLISTER, *Judge.*
(Sig'd) OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed Dec. 5, 1857. John A. Monroe, clerk, by J. Edgar Grymes, deputy.

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-seven—

Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES ads. RAFAEL GARCIA. } D. C. 96, L. C. 113.

In this case, on application of P. Della Torre, esq., U. S. attor-

ney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered at the present term in said cause be, and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court without delay.

Endorsed: Filed Dec. 5, 1857. John A. Monroe, clerk, by J. Edgar Grymes, deputy.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages from one to fifty-two, inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, and decree filed in this office in the case entitled the United States, appellants, vs. Rafael Garcia, appellee.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court the 17th day of December, in [SEAL.] the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second.

JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Deputy.*